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No infectious diseases standard forthcoming, acting OSHA head says

An infectious diseases standard won't be coming anytime soon, acting OSHA administrator Loren Sweatt indicated during a May 28 hearing convened by the House Workforce Protections Subcommittee, adding that "the regulatory agenda speaks for itself."

Sweatt declined to comment about calls for an emergency temporary standard amid the COVID-19 pandemic, citing a pending AFL-CIO lawsuit.

A standard on infectious diseases is listed among the "long-term" actions on the Department of Labor's current regulatory agenda, meaning no progress is expected in the near future. Work on an infectious diseases standard began in May 2010, near the end of the swine flu (H1N1) pandemic. The latest public step was the completion of a review by a Small Business Advocacy Review panel in December 2014. The standard was moved to the long-term portion of the agenda in July 2017.

Sweatt noted that OSHA would have to repeal two standards if it issued an infectious diseases standard, as required under President Donald Trump's "2-for-1" deregulatory Executive Order issued in January 2017.

The Heroes Act (H.R. 6800), which passed in the House on May 15, calls on OSHA to immediately create an emergency temporary standard and issue a permanent infectious diseases standard 24 months later. The AFL-CIO filed a petition May 18 in the U.S. Court of Appeals for the District of Columbia Circuit, asking the court to direct the agency to issue an emergency temporary standard. The court on June 11 rejected the lawsuit.

Subcommittee Chair Rep. Alma Adams (D-NC) contended that Sweatt's refusal to answer questions about an emergency temporary standard has "no legal basis." When asked by Rep. Bobby Scott (D-VA), chair of the House Education and Labor Committee, which legal privilege she was claiming, Sweatt replied, "I've been advised by Department (of Labor) counsel not to answer questions on ETS."

While discussing the pros and cons of issuing guidance versus issuing a standard, Rep. Bradley Byrne (R-AL) – the subcommittee's ranking member – argued



that the former is the same method the agency used during other recent pandemics, including the swine flu pandemic from 2009 to 2010.

"We are still learning about this disease and we just don't know enough information to meet the level necessary and appropriate to construct an adequate emergency temporary standard and a permanent federal regulation," Byrne said in his opening statement. "That's why the various guidance documents already issued are so useful. They can be issued relatively quickly and modified as we learn more from the [Centers for Disease Control and Prevention] and other public health officials, and from the workplaces themselves.

– article continues on p. 4

OSHA to employers: Record COVID-19 cases

OSHA has revised its enforcement policy for recordable cases of COVID-19, adding that it will increase workplace inspections.

Announced in a May 19 press release, the new enforcement policy overrides an April 10 guidance memo that required only employers in the health care industry, emergency response organizations and correctional institutions to make work-related determinations of COVID-19 cases. All other employers were exempt except in cases in which “objective evidence” existed that a COVID-19 infection was work-related or the evidence was “reasonably available” to the employer.

Now, OSHA states that COVID-19 cases are recordable if the illness is confirmed as COVID-19, the illness is work-related as defined by 29 CFR 1904.5 and the case involves at least one of the general

recording criteria listed in 29 CFR 1904.7. The criteria include days away from work, medical treatment “beyond first aid,” loss of consciousness, and restricted work or transfer to another job.

“Given the nature of the disease and community spread, however, in many instances it remains difficult to determine whether a coronavirus illness is work-related, especially when an employee has experienced potential exposure both in and out of the workplace,” the agency states in the release. “OSHA’s guidance emphasizes that employers must make reasonable efforts, based on the evidence available to the employer, to ascertain whether a particular case of coronavirus is work-related.”

OSHA adds, “Recording a COVID-19 illness does not, of itself, mean that the employer has violated any OSHA standard.”

When determining whether an employer has complied with the revised policy, OSHA, in a memo issued the same day, instructs compliance officers to apply these considerations:

- The reasonableness of the employer’s investigation into whether the COVID-19 case was work-related
- The evidence available to the employer
- The evidence that COVID-19 was contracted at work

“If, after the reasonable and good-faith inquiry described above, the employer cannot determine whether it is more likely than not that exposure in the workplace played a causal role with respect to a particular case of COVID-19, the employer does not need to record that COVID-19 illness,” the memo states.

OSHA ALLIANCES

The OSHA Alliance Program fosters collaborative relationships with groups committed to worker safety and health. Alliance partners help OSHA reach targeted audiences and give them better access to workplace safety and health tools and information. For more on OSHA alliances, go to osha.gov/dcsp/alliances/index.html.

International Window Cleaning Association

Date of alliance: May 21, 2020

OSHA and the International Window Cleaning Association continue to recognize the value of maintaining a collaborative relationship to improve safety and health practices and programs in American workplaces, and commit to continue their work together.

In recognition of this ongoing commitment, OSHA will continue to foster an active relationship with IWCA by:

- Providing routine communication on enforcement, regulatory and outreach initiatives.
- Engaging in information sharing and technical discussions, as appropriate, including completing special projects of mutual interest that align with agency priorities and as resources allow.



- Sharing invitations to, and offering opportunities to speak at, OSHA Alliance Program and other agency stakeholder meetings or events.

IWCA will continue to foster an active relationship with OSHA by:

- Sharing information with members and stakeholders on OSHA’s national initiatives (enforcement, regulatory and outreach), and encouraging their participation in OSHA’s outreach initiatives and rulemaking processes.
- Sharing information with members and stakeholders on occupational

safety and health laws and standards, including the rights and responsibilities of workers and employers.

- Encouraging IWCA members to build relationships with OSHA’s national, regional and area offices to address health, safety and whistleblower issues.
- Sharing information with OSHA personnel and industry safety and health professionals regarding IWCA good practices or effective approaches through training programs, workshops, seminars and lectures (or any other applicable forum).
- Offering OSHA opportunities to speak, exhibit or appear at IWCA conferences, local meetings or other events.

Excerpted from osha.gov/alliances/national/iwca_agreement_20200521.

In Other News...

OSHA answers FAQs on wearing masks at work

New guidance from OSHA answers six frequently asked questions regarding the use of masks in the workplace during the ongoing COVID-19 pandemic.

Among the agency's answers is an explanation of the key differences between cloth facial coverings, surgical masks and respirators. Other topics include whether employers are required to provide masks, the continued need to follow physical distancing guidelines when wearing masks and how workers can keep cloth masks clean.

The agency reminds employers not to use surgical masks or cloth facial coverings for work that requires a respirator.

Find the document at osha.gov/SLTC/covid-19/covid-19-faq.html.

OSHA launches website with guidance for construction industry

Aiming to reducing COVID-19 exposure among construction workers, OSHA has created a new website with guidance for employers.

The website includes a table that describes work tasks and their exposure risk level (from "very high" to "lower"), based on the agency's occupational risk pyramid for COVID-19. It also covers engineering and administrative controls, safe work practices, and personal protective equipment.

The website also has a section on cloth facial coverings. OSHA warns that "cloth face coverings are not PPE. They are not appropriate substitutes for PPE such as respirators (like N95 respirators) or medical facemasks (like surgical masks) in workplaces where respirators or facemasks are recommended or required to protect the wearer."

Access the website at osha.gov/SLTC/covid-19/construction.html.

OSHA STANDARD INTERPRETATIONS

OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.

Electronic worker training records

Standard: 1910

Date of response: July 11, 2019

Question 1: *Are online training programs acceptable for compliance with OSHA's worker training requirements?*

Response: Online self-paced, computer-based training can be a valuable part of an effective safety and health training program. However, the use of online training by itself would not be sufficient to satisfy OSHA training requirements unless that training contains interactive and hands-on components. To be effective, training must result in mastery of the training material (such as, for example, safe work practices or the safe and appropriate use of tools and personal protective equipment). Online training without interactive and hands-on components would not meet this goal.

The opportunity for workers to be able to ask questions of, and receive responses from, a qualified trainer(s), in a timely manner, is critical to effective training. Online training that does not provide workers with this opportunity would not comply with OSHA's worker training requirements. Training with no interaction, or delayed or limited interaction, between the trainer and trainee may halt or negatively affect a trainee's ability to understand and/or retain the training material. OSHA notes that one way for the employer to give workers this opportunity in the context of a computer-based program is to provide a telephone hotline so that workers will have direct access to a qualified trainer during the conduct of the online training.

Equally important is the provision of sufficient hands-on training, because it allows an employee to interact with equipment and tools in the presence of a qualified trainer(s), allows the employee to learn or refresh their skills through experience, and allows the trainer to assess whether the trainees have mastered the proper techniques. Online training that does not provide workers with hands-on training would not comply with OSHA's worker training requirements.

Question 2: *Is a worker's signature necessary for compliance with safety requirements for worker training taken online?*

Response: Obtaining an employee's signature following training is generally not required by OSHA's standards. Although a search of OSHA's standards by this office did not reveal any standard that requires the employer to obtain the employee's signature, employers should consult applicable OSHA standards to ensure compliance with those standards.

Patrick Kapust, Acting Director
Directorate of Enforcement Programs

Excerpted from osha.gov/laws-regs/standardinterpretations/2019-07-11.

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“And if OSHA’s response was the best way to go for SARS, MERS, H1N1 and Ebola, why is it not best for COVID-19?”

In response to a question from Byrne, Sweatt said, “We have followed the H1N1 pandemic strategy almost to the T.”

Byrne asked NIOSH Director John Howard, who testified at the hearing, whether the evolving COVID-19 situation would make the creation of a standard difficult as opposed to issuing guidance. “I think it’s very difficult,” Howard said. “Guidance is, as you mention, an easier pathway. When we learn something new, that guidance can be changed almost instantaneously.”

In her closing statement, Adams said she wanted to emphasize that the emergency temporary standard being called for in the Heroes Act is “not a rigid or inflexible, one-size-fits-all standard that fails to accommodate changing scientific knowledge.”

Instead, she said, it calls for an infection control panel based on hazards in a particular workplace and requires a hazard assessment in the specific workplace.

As an example, Adams called attention to the Aerosol Transmissible Disease Standard issued in 2009 by the California Division of Occupational Safety and Health, or Cal/OSHA.

Similarly, Rep. Joe Courtney (D-CT), one of the many guests from the House Education and Labor Committee, pointed to the changes in OSHA’s Bloodborne Pathogens Standard (1910.1030), which were required when the Needlestick Safety and Prevention Act of 2000 was signed into law.

“When we talk about having a standard put into place, this is not some wild, unprecedented sort of notion,” Courtney said.

One COVID-19-related citation issued

Sweatt revealed that OSHA so far had issued one citation related to the current pandemic, but said the agency is investigating more than 5,000 complaints related to COVID-19. She explained that the agency has up to six months to complete these investigations and take enforcement action. Sweatt added that OSHA has to “build a legal case” on any citation to stand up against legal scrutiny.

“Looking at citations is maybe not the best parameters here,” Sweatt said in response to a question from Rep. Suzanne Bonamici (D-OR). “What we’re really trying to do is remove the worker from the hazard or remove the hazard from the workplace. Our priority has been that.”

Sweatt added that if OSHA finds an employer is not protecting workers, “we will enforce.”